

From Don Duquette, 10/4/07:

There is a section of Michigan's termination of parental rights statute that seems to have had unintended and unfortunate consequences in the child welfare cases. The section that I am concerned about now gives the family court authority to terminate parental rights if:

(m) The parent's rights to another child were voluntarily terminated following initiation of proceedings under section 2(b) of this chapter or a similar law of another state.

This provision: 1) inhibits cooperative, voluntary planning for a child's future, particularly within the extended family; 2) discourages non-adversarial resolution of cases; 3) is unnecessarily punitive; and 4) is unnecessary to accomplish termination in the case of the chronic abusive or neglectful parent, because other provisions adequately cover such cases.

This provision inhibits cooperative voluntary planning for a child's future, particularly within the extended family. Many times a good resolution of a child protection case is for a parent, commonly a young parent, to release parental rights to a grandparent, another relative, or to the Department of Human Services. Having the strength and courage to recognize one's limitations shows a certain level of maturity and can itself be an act of love for the child. A cooperative resolution generally gets a good result for the child and is very efficient in that it can avoid very difficult and prolonged legal proceedings. However, once an otherwise willing parent is informed of the consequences of a voluntary release, any chance of cooperative solution vanishes. Without the availability of a voluntary release without the dire consequences of putting future children at risk, permanency options for the children are reduced.

This provision also discourages non-adversarial resolution of cases. Prior to the enactment of 19b(3)(m), parents had an incentive to resolve a case (and plan for their child) through voluntary release. A parent could release rights to a current child without serious consequences to future children. Everyone avoided a contested termination of parental rights hearing which can be lengthy and difficult. But under the current law the parent contemplating release must understand that yielding their parental rights to another means that the state may have grounds to terminate their rights to future children and that, if there is any substantiation of child abuse or neglect in the future, the DHS is required to file a mandatory petition for termination of parental rights. While release of parental rights might be desirable for the immediate child, the risk to future children is very great and the parent is discouraged from non-adversarial resolution.

The current provision is also unduly punitive. We have seen cases where a parent's rights were terminated when the parent was very young, -- 17, 18 and as young as 14 -- under circumstances that most reasonable persons would say were understandable and hardly blameworthy. Yet if they come to the attention of authorities later they face a mandatory petition and clear grounds to terminate their parental rights. In one of our cases a mother and her children came to the attention of DHS based on the abuse by the father, for which she could not be held responsible. The DHS was nonetheless required

to file a petition covering the children and asking for termination of parental rights. It is possible to persuade a court to use its discretion not to terminate because it is not in their child's best interests, but legally that can be a very weak argument.

Finally, this section (m) is not really necessary to cover the case of the chronic abusive or neglectful parent whose inability to parent is clearly established. Eliminating section (m) will not compromise the ability of the court to terminate the rights of a parent whose past conduct demonstrates an inability to parent. Other provisions of law cover those serious cases. For instance, Michigan law is clear that how a person has treated other children is admissible on the question of neglect of a subsequent child. (Dittrick, LaFlure). Two other sections of the juvenile code also provide specific grounds for termination that cover this concern. Section 712A.19b(3)(i) provides grounds for TPR when:

(i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

And 19b(3)(l) authorizes an even broader termination of parental rights when:

(l) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state.

So, the paradigm case of a person who has demonstrated an inability to parent in a culpable way is covered by these other provisions. If a person has indeed seriously failed as a parent, the court can use the past failures as evidence and even use that failure as a separate legal basis for TPR of subsequent children.

I wonder what your experience has been. Perhaps we can send this idea to the appropriate committee for review and action?